



ATTORNEY DOCKET NO. 1671-0004

A8

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Mark J. Weiser

Serial No.: 09/842,963

Filed: April 27, 2001

For: **DEVICE FOR CONTAINING ANIMAL REPELLENT AND ATTRACTANT COMPOSITIONS**

Group Art Unit: 1616

Examiner: Neil S. Levy

**RESPONSE TO OFFICE ACTION**

Assistant Commissioner for Patents

Attention: Office of Petitioner

Box DAC

Washington, D.C. 20231

I, Philip E. Levy, hereby certify that this correspondence and all documents indicated as being provided therewith are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Attention: Office of Petitions, Box DAC, Washington D.C. 20231 on:
3/6/03
Date of Deposit

Signature

Sir:

In the Office Action mailed on February 5, 2002, the Examiner required restriction between Group I, claims 1-16, Group II, claims 17-22, and Group III, claim 23, and an election of species. The Examiner indicated that claims 1 and 7-14 were generic. Applicant provisionally elects for prosecution Group I, claims 1-16, and the plastic cover species. Applicant, however, believes that the restriction is improper and therefore makes the above election with traverse.

Section 803 of the M.P.E.P. sets out the criteria for restriction between two inventions:

There are two criteria for a proper requirement for restriction between patentability distinct inventions:

(1) The inventions must be independent or distinct as claimed; and

(2) There must be a serious burden on the examiner if restriction is not required.

(M.P.E.P. § 803, citations omitted, emphasis added).

Applicant respectfully submits that (1) all groups of restricted claims are properly presented in the same application; (2) undue diverse searching would not be required; and (3) all claims should be examined together. Applicant submits that this is true in light of the fact that the all of the claims share a common limitation relating to a container or the like that is impervious to the passage therethrough of liquid and pervious to the passage therethrough of gaseous effluent. Accordingly, Applicant respectfully submits that Group II, claims 17-22, and Group III, claim 23 would place no additional "serious" burden on the Examiner and that these claims should be examined on the merits.

For the foregoing reasons, it is respectfully submitted that the restriction requirement should be withdrawn and an action on the merits of all the claims is respectfully requested.

No extension of time is believed to be necessary for consideration of this Response. In the event that an extension is deemed to be necessary, Applicant hereby petitions for such an extension. The Commissioner is authorized to charge any additional fees which may be required by this paper, or credit any overpayment to Deposit Account No. 50-0525. **A DUPLICATE COPY OF THIS SHEET IS ENCLOSED.**

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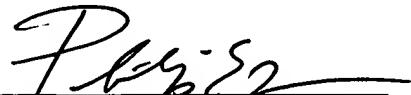
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In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

METZ LEWIS LLC

By:



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